

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUSSELL J. STEWART,                     )  
  )  
  Plaintiff,   )  
  )  
vs.   )       No.:  
  )  
UNUM LIFE INSURANCE                    )  
COMPANY OF AMERICA,                    )  
  )  
  Defendant.)

## **COMPLAINT**

Filed On Behalf of:  
Plaintiff

Counsel of Record For This Party:

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FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUSSELL J. STEWART,                    )  
  )  
  Plaintiff,    )  
  )  
vs.    )    No.:  
  )  
UNUM LIFE INSURANCE                    )  
COMPANY OF AMERICA,                    )  
  )  
  Defendant.)

**PRAECIPE FOR APPEARANCE**

TO: Clerk

Please enter my appearance on behalf of the  
Plaintiff, Russell J. Stewart, in the above-captioned case.

Dated:    March 5, 2015   

By: Neil J. Marcus, Esquire  
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUSSELL J. STEWART,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.:
	)	
UNUM LIFE INSURANCE	)	
COMPANY OF AMERICA,	)	
	)	
Defendant.)	)	

**COMPLAINT**

AND NOW, comes the Plaintiff, Russell J. Stewart, by and through his attorney, Neil J. Marcus, Esquire, and files the following Complaint:

**JURISDICTION**

1. This action is brought by Russell J. Stewart, an employee of Primary Care Health Services, pursuant to Income Security Act of 1974 ("ERISA") 29 U.S.C. §1001 et seq.

2. This action asserts claims brought due to the failure of Defendant, among other things, to continue to pay long term disability benefits and breaches of Defendant's

fiduciary duty including, but not limited to, failing to comply with statutory requirements regarding denial of benefits in violation of the law and its regulations and in violation of the plan, in failing to provide requested information as permitted by statute, in misleading the Plaintiff by misrepresenting the basis of its failure to pay long term disability benefits to Plaintiff, in precluding Plaintiff from properly exhausting internal remedies and under theories of equitable estoppel as provided by ERISA.

3. Jurisdiction of this Court is conferred under various sections of ERISA, including Section 502, 29 U.S.C. §1132(a)(1)(B), 1132(a)(3)(A) and 1132(a)(3)(B). This case involves a federal question and jurisdiction lies pursuant to 28 U.S.C. §1331.

4. At all times relevant hereto, Plaintiff was a participant and/or a beneficiary who had a colorable claim to disability benefits.

### **PARTIES**

5. The Plaintiff, Russell J. Stewart, is an employee of Primary Care Health Services, who resides in South Park, Allegheny County, Pennsylvania.

6. The Plaintiff, Russell J. Stewart, worked at Primary Care Health Services, as a lab technician, when on or about November 8, 2013, he became disabled.

7. UNUM Life Insurance Company of America, has a registered office in Portland, ME, with a mailing address of P.O. Box 9548, Portland, ME 04104-5058.

8. UNUM Life Insurance Company of America is an insurance company, which offers group disability insurance to employees such as Russell J. Stewart, through his employment. It further acts as claim administrator for long term disability benefits sold through its policies, including the one at issue hereinafter known as the Long Term Disability Plan (LTD). Plaintiff has no current information on the exact name of the plan and/or the administrator as UNUM Life Insurance Company of America has not provided this information.

9. At all times relevant hereto, UNUM Life Insurance Company of America administered claims at its office that has an address of P.O. Box 9548, Portland, ME 04104-5058.

10. At all times relevant hereto, the Defendant, UNUM Life Insurance Company of America, maintained a health

and welfare program for its employees to provide Long Term Disability (LTD).

### **FACTS**

11. On or about October 17, 2014, the claim for Long Term Disability benefits (LTD) was denied by the Defendant, UNUM Life Insurance Company of America. On October 28, 2014, the Plaintiff, through his attorney, and in accordance with UNUM's Administrative Rules, requested reconsideration. A copy of both the denial dated October 17, 2014 and the appeal dated October 28, 2014 is attached hereto and marked as Exhibits "A" and "B".

12. The Plaintiff, Russell J. Stewart, suffers from a right shoulder injury, neck injury, a right hemidiaphragm defect and right hemidiaphragm hernia, that impacts his ability to walk and stand over an eight (8) hour period; has impeded his ability to balance, stoop, crawl, reach, and, in short, perform work on a gainful and regular basis.

13. Plaintiff submitted additional medical evidence dated December 31, 2014. See Exhibit "C" attached hereto. Medical records not attached.

14. Plaintiff, Russell J. Stewart, remains physically disabled.

15. By letter dated February 18, 2015, UNUM reaffirmed its denial of benefits. See Exhibit "D" attached hereto.

16. As of the filing of this Complaint, UNUM Life Insurance Company of America has failed to properly review this claim and, therefore, continuing to exhaust his remedies with UNUM seems impossible to the Plaintiff.

### **COUNT I**

17. Paragraphs 1 through 16 are hereby incorporated by reference as though more fully set forth at length.

18. Contrary to ERISA §503 and pursuant to §502(a)(3)(B), 29 U.S.C. §1132(a)(3)(b), Defendant breached their fiduciary duty to the Plaintiff, Russell J. Stewart, required by 29 U.S.C. §1133(a) and (2) in denying Plaintiff a full and fair review of his Long Term Disability benefits, despite the information provided by Glenn A. Buterbaugh, M.D., Megan Cortazzo, M.D., Eric M. Altschuler, M.D., Omar Awais, D.O., Andrew T. Bonneau, D.C., and William J. Mitchell, M.D., and

thereby denied Plaintiff not only his claim, but denied Plaintiff a proper administrative review.

19. Contrary to ERISA §404 and pursuant to §502(a)(1)(B), Defendant failed to act with care, skill, prudence, and diligence in administering Plaintiff's claim.

20. Contrary to ERISA §404 and pursuant to §502(a)(3)(B), 29 U.S.C. §1132(a)(3)(B) and §502(a)(1)(B), Defendant failed to act in accordance with plan documents.

21. Contrary to ERISA §404 and pursuant to §502(a)(3)(B) 29 U.S.C. §1132(a)(3)(B), Defendant failed to act for the exclusive purpose of providing benefits to Plaintiff as a plan participant.

22. Defendant, UNUM Life Insurance Company of America, acted in bad faith and denied Plaintiff's benefits in that the before-mentioned letters and records of Glenn A. Buterbaugh, M.D., Megan Cortazzo, M.D., Eric M. Altschuler, M.D., Omar Awais, D.O., Andrew T. Bonneau, D.C., and William J. Mitchell, M.D., clearly show that Plaintiff could not perform his regular job duties as a lab technician.

WHEREFORE, Plaintiff, Russell J. Stewart, demands relief as follows:



(a) An Order awarding Plaintiff past and future Long Term Disability benefits to which he is entitled;

(b) An Order enjoining the Defendant from continuing to withhold Long Term Disability benefits;

(c) An Order of restitution requiring Defendant to pay all Long Term Disability benefits and any benefits associated with said long term benefits associated with recipients of said benefits the Defendant has failed to pay;

(d) An Award of prejudgment and post judgment interests, on amounts awarded pursuant to Plaintiff's claim;

(e) An Award of all costs and attorney's fees pursuant to 29 U.S.C. §1132(g)(1); and further relief, whether equitable or otherwise, which this Court deems just and proper.

Respectfully submitted,

By /s/ Neil J. Marcus, Esquire

Neil J. Marcus, Esquire

Attorney for Plaintiff

P.O. Box 652

Monongahela, PA 15063

Phone: (724) 258-8444

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**AFFIDAVIT**

I, WE, Russell J. Stewart, verify that the statements made in the foregoing COMPLAINT are true and correct.

I, WE, understand that false statements herein are made subject to the penalties of 18 PA. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: March 5, 2015      /s/ Russell J. Stewart